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the Proposed Class*

10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**

12
13 HEATHER CARSON and MARK
14 SANDERS-FERRIERA, individually
15 and on behalf of others similarly
situuated,

16 Plaintiffs,

17 vs.

18
19 WAYFAIR, INC., a Delaware
20 corporation,

21 Defendant.

22 Case No. 2:16-cv-00716

23 **CLASS ACTION COMPLAINT
FOR:**

1. **Unfair Business Practices in
Violation of California Business &
Professions Code §17200, *et seq.***
2. **Fraudulent Business Practices in
Violation of Business &
Professions Code §17200, *et seq.***
3. **Unlawful Business Practices in
Violation of Business &
Professions Code §17200, *et seq.***
4. **False Advertising in Violation of
Business & Professions Code
§17500, *et seq.***
5. **Violations of California Consumer
Legal Remedies Act**

24 **JURY TRIAL DEMANDED**

1 Plaintiffs Heather Carson and Mark Sanders-Ferriera, by and through their
 2 attorneys of record, bring this class action against Defendant Wayfair, Inc.
 3 ("Wayfair" or "Defendant"), individually and on behalf of a proposed Class of all
 4 others similarly situated, and allege as follows based upon personal knowledge and
 5 investigation of their counsel:

6 **NATURE OF THE ACTION**

7 1. This is a class action against Wayfair for falsely advertising "original"
 8 prices, "sale" prices and corresponding price discounts for its home goods on its
 9 website (www.wayfair.com). During the class period (defined below), Wayfair
 10 advertised false former prices and false price discounts for its consumer goods on its
 11 website. Wayfair is a publicly-traded company on the NYSE. Its 2014 annual
 12 report claims it had 3.2 million customers, 5.2 million orders and net revenue of
 13 \$1.3 billion (www.investor.wayfair.com/investor-relations/financial-reports, last
 14 visited January 29, 2016).

15 2. During the Class Period, Wayfair misrepresented the existence, nature
 16 and amount of price discounts by purporting to offer specific dollar discounts from
 17 the expressly referenced former retail prices, which were misrepresented as
 18 "original" or "regular" retail prices. These purported discounts were false, however,
 19 because the referenced former retail prices were fabricated and did not represent
 20 Wayfair's true "original" retail prices. Furthermore, the advertised "original" prices
 21 for Wayfair's items were not the prevailing market retail prices within three months
 22 next immediately preceding the publication of the advertised former prices, as
 23 required by California law.

24 3. The Federal Trade Commission ("FTC") describes false former pricing
 25 schemes, similar to Wayfair's in all material respects, as deceptive:

26 "One of the most commonly used forms of bargain advertising is to offer a
 27 reduction from the advertiser's own former price for an article. If the former
 28 price is the actual, bona fide price at which the article was offered to the

1 public on a regular basis for a reasonably substantial period of time, it
2 provides a legitimate basis for the advertising of a price comparison. Where
3 the former price is genuine, the bargain being advertised is a true one. If, on
4 the other hand, the former price being advertised is not bona fide but fictitious
5 – for example, where an artificial price, inflated price was established for the
6 purpose of enabling the subsequent offer of a large reduction – the "bargain"
7 being advertised is a false one; the purchaser is not receiving the unusual
8 value he expects." 16 C.F.R. § 233.1(a).

9 4. California's statutory and regulatory law expressly prohibits false
10 former advertising pricing schemes. California Business & Professions Code
11 section 17501, entitled "*Value determinations; Former price advertisements*", states:

12 For the purpose of this article the worth or value of anything
13 advertised is the prevailing market price, wholesale if the offer is at
14 wholesale, retail if the offer is at retail, at the time of publication of
15 such advertisement in the locality wherein the advertisement is
16 published.

17 *No price shall be advertised as a former price of any advertised*
18 *thing, unless the alleged former price was the prevailing market price*
19 *as above defined within three months next immediately preceding the*
20 *publication of the advertisement or unless the date when the alleged*
21 *former price did prevail is clearly, exactly and conspicuously stated in*
22 *the advertisement. [emphasis added.]*

23 5. Wayfair advertises sales on its website, which list home goods and
24 furnishings between approximately "20% OFF" up to "75% OFF", and lists a former
25 price that is stricken through but still visible next to a discounted "Today" or

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1 current sale price. An example of this advertising scheme is listed below:

Free Shipping Over \$49*

wayfair Find anything for your home... Search

My Boards Ideas Account Cart

Furniture Décor Lighting Kitchen Bed & Bath Storage Outdoor Home Improvement Baby & Kids Seasonal Gifts Sales

Furniture > Accent Furniture > Accent Chairs > Home Loft Concepts > SKU: NFN1313

FREE 2-Day Delivery

Starks Upholstered Lounge Chair by Home Loft Concepts

4.5 stars 364 Reviews | 13 Questions Answered

\$227.99 \$919.42 75% Off

Free 2-Day Delivery on select options
Want it Wednesday, Feb 3? Order within 7 hrs 25 mins.

Select Color:

Quantity: 1

Add to Cart Save to Idea Board

Are you in the Trade? Exclusive discounts may be available. [Click here to learn more](#)

Buy clearance item(s) for \$171.79

16 www.wayfair.com/Starks-Upholstered-Lounge-Chair-OGO2424-NFN1313.html
 17 (last visited February 1, 2016) (enhanced to show pricing).

18 6. Wayfair does not advertise the "former" prices listed for its home
 19 goods and furnishings for a period of 90 days prior to advertising their "sale" prices
 20 next to the "former prices" in violation of Cal. Bus. & Prof. Code § 17501 and Cal.
 21 Civil Code § 1770(a)(5), (a)(7), (a)(13) and (a)(14). Further, Wayfair's custom and
 22 practice is to only sell one or very few item(s) at its advertised "sale" price, and then
 23 list the item as "Sold Out". Thus, the "sale" price is not a bona fide price at which a
 24 consumer good is truly offered to the public, but instead a classic "bait-and-switch"
 25 scheme in violation of Cal. Bus. & Prof. Code § 17500 and Cal. Civil Code
 26 §1770(a)(9) and §1770(a)(10).

27 7. Wayfair's false price advertising scheme, as described above, is
 28 disseminated to California consumers via its website (www.wayfair.com), radio,

1 television and print media, is and was pervasive throughout California as part of
2 Wayfair's ubiquitous advertising campaign during the Class Period.

3 8. Thousands of California consumers were victims of Wayfair's
4 deceptive, misleading and unlawful pricing scheme and thousands more will be
5 deceived if Wayfair's deceptive practices continue.

6 9. Wayfair knew and knows that its comparative price advertising was,
7 and is, false, deceptive, misleading and unlawful under California law.

8 10. Wayfair fraudulently concealed from and intentionally failed to
9 disclose to Plaintiffs and the proposed Class the truth about its advertised price
10 discounts and former prices.

11 11. At all relevant times, Wayfair has been under a duty to Plaintiffs and
12 the proposed Class to disclose the truth about its "regular" and "sale" prices.

13 12. The facts which Wayfair misrepresented and/or failed to disclose are
14 material facts that a reasonable person would consider material, *i.e.* facts which
15 would contribute to a reasonable person's decision to purchase home goods and
16 furnishings. Wayfair's false representations of "regular", "former", "50% off" and
17 "sale" prices and false representations of purported savings, discounts and bargains
18 are objectively material to the reasonable consumer, and therefore reliance upon
19 such representations may be presumed as a matter of law.

20 13. Plaintiffs relied upon such false representations of "original" prices and
21 discounts when purchasing items at Wayfair.com. Plaintiffs would not have made
22 such purchases but for Wayfair's false representations of "former" and "sale" prices.

23 14. Plaintiffs reasonably and justifiably acted and relied to Plaintiffs'
24 detriment on Wayfair's false "former" price representations and failure to disclose,
25 and concealment of, the truth about Wayfair's false price-comparison advertising
26 scheme in purchasing home goods and furnishings at Wayfair.com.

27 15. Through its false and deceptive marketing, advertising and pricing
28 scheme, Wayfair violated (and continues to violate) California law prohibiting: (1)

1 advertising goods for sale as discounted from former prices which are false; (2)
2 misleading statements about the existence and amount of price reductions; (3)
3 advertising consumer goods at a price with no intention of selling the goods at the
4 advertised price; and (4) advertising goods with no intent to supply reasonably
5 expected demand, and without advertising a limitation of quantity. Specifically,
6 Wayfair violated (and continues to violate) California's Business & Professions
7 Code §§ 17200, *et seq.* (the "UCL"), California's Business & Professions Code §§
8 17500, *et seq.* (the "FAL"), California Civil Code § 1750, *et seq.* (the "CLRA"), and
9 the Federal Trade Commission Act ("FTCA"), which prohibits "unfair or deceptive
10 acts or practices in or affecting commerce" (15 U.S.C. § 45(a)(1)) and specifically
11 prohibits false advertisements. 15 U.S.C. § 52(a).

12 16. Plaintiffs, individually and on behalf the proposed Class, seek
13 restitution and other equitable remedies, including an injunction under the UCL and
14 FAL.

PARTIES

16 17. Plaintiff Heather Carson is an adult who is a citizen and resident in the
17 County of Los Angeles, who in reliance on Defendant's false and deceptive
18 advertising, marketing and pricing schemes, purchased \$518.24 of home furnishings
19 in or about July of 2013 and \$150.41 of home furnishings from Wayfair.com on
20 December 26, 2015, and was damaged thereby.

18. Plaintiff Mark Sanders-Ferriera is an adult who resides in the County of
Riverside, who in reliance on Defendant's false and deceptive advertising,
marketing and pricing schemes, purchased \$499.98 of home furnishings from
Wayfair.com on June 26, 2015, and was damaged thereby.

25 19. Defendant Wayfair is a publicly traded Delaware corporation
26 (NYSE:W) with its principal office located in Boston, Massachusetts. According to
27 its Form 10-K filed with the SEC for the fiscal year ending December 31, 2014,
28 "Wayfair is one of the world's largest online destinations for the home. Through our

1 e-commerce business model, we offer visually inspired browsing, compelling
2 merchandising, easy product discovery and attractive prices for over seven million
3 products from over 7,000 suppliers across five distinct brands: Wayfair.com, Joss &
4 Main, AllModern, Dwellstudio and Birch Lane."

5 20. When in this Complaint reference is made to any act of Wayfair or
6 Defendant, such shall be deemed to mean that officers, directors, agents, employees,
7 or representatives of the Defendant named in this lawsuit committed or authorized
8 such acts, or failed and omitted to adequately supervise or properly control or direct
9 their employees while engaged in the management, direction, operation or control of
10 the affairs of the Defendant and did so while acting within the scope of their
11 employment or agency.

JURISDICTION AND VENUE

13 21. The Court has original jurisdiction over this Action under the Class
14 Action Fairness Act, 28 U.S.C. § 1332(d), because this is a class action in which: (1)
15 at least some members of the proposed Class have different citizenship from
16 Defendant; and (2) the claims of the proposed Class Members exceed \$5,000,000 in
17 the aggregate.

18 22. The Central District of California has personal jurisdiction over
19 Defendant because Defendant is a corporation authorized to do business in the State
20 of California and registered with the California Secretary of State to do business
21 with sufficient minimum contacts in California, and/or otherwise intentionally avails
22 itself of the California market through Internet sales, and TV, radio and print
23 advertisements, to render the exercise of jurisdiction by the California courts
24 consistent with the traditional notions of fair play and substantial justice.

25 23. Venue is proper in this District pursuant to 28 U.S.C. § 1331(b)(2)
26 because a substantial part of the events or omissions giving rise to the alleged claims
27 occurred in this District given that Plaintiffs purchased the Products while in this
28 District and Defendant markets, promotes, and sells the Products in this District.

1 Plaintiffs are filing concurrently herewith Declarations stating facts showing that
 2 this action has been commenced in a proper county pursuant to California *Civil*
 3 *Code* section 1780(c).

4 **FACTUAL ALLEGATIONS**

5 24. Plaintiff Heather Carson visited Wayfair.com in or about July of 2013,
 6 for the purpose of buying two (2) chairs for the front room of her home. She saw
 7 two (2) chairs that fit the style of what she was looking for. Plaintiff Carson selected
 8 these two chairs and placed them in her virtual shopping cart. When Plaintiff Carson
 9 attempted to purchase the chairs, Wayfair's website stated that the items were "Sold
 10 Out" and then it re-directed her to much more expensive chairs.

11 25. Plaintiff Carson did not purchase the items that she was re-directed to
 12 because of the substantial difference in price. She ultimately purchased two (2)
 13 Home Loft Concept Flowered Chairs (SKU 234490) from Wayfair approximately
 14 one-week later that were more reasonably priced at \$518.24. A screenshot of
 15 Wayfair's website advertising the Home Loft Concept Flowered Chairs on a later
 16 date of September 5, 2013, is attached as Exhibit A. Although this screenshot is
 17 after the date Plaintiff Carson purchased the chairs, the information is substantially
 18 similar other than the price of the chairs. She was induced to purchase two (2)
 19 Home Loft Concept Flowered Chairs, believing that she was able to purchase the
 20 Home Loft Concept Flowered Chairs for significantly less than what they were
 21 worth and normally sell for in the market place. Plaintiff Carson purchased the
 22 Home Loft Concept Chairs in reliance on Defendant's website's advertisement that
 23 the sale price was good for only three hours and that Wayfair only had 3 chairs left
 24 in stock. Plaintiff Carson's purchase was made in reliance on Defendant's advertised
 25 reduction of the Home Loft Concept Flowered Chairs former price, on the short
 26 duration of Defendant's sale and the representation that Wayfair only had 3 chairs
 27 left in stock.

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1 26. Plaintiff Carson checked Wayfair's website a couple of days later and
 2 discovered that Wayfair in fact had many more of the Home Loft Concept Chairs in
 3 stock.

4 27. Plaintiff Carson would not have purchased the Home Loft Concept
 5 Flowered Chairs if not for Defendant's advertised former price, the short duration
 6 of Defendant's sale and the representation that Wayfair only had 3 chairs left in
 7 stock.

8 28. Defendant's "sale" price is not a bona fide price at which a consumer
 9 good is truly offered to the public, but instead a classic "bait-and-switch" scheme in
 10 violation of Cal. Bus. & Prof. Code § 17500 and Cal. Civil Code §1770(a)(9) and
 11 §1770(a)(10).

12 29. Plaintiff Heather Carson also visited Wayfair.com on December 26,
 13 2015, for the purpose of buying an office chair. She saw a chair described as a
 14 "Mid-Back Office Chair by Andover Mills" (hereinafter "Office Chair"). Defendant
 15 falsely advertised the Office Chair on its website as having a current price of
 16 \$138.99, with a much higher price of \$276.46 that was stricken through but still
 17 visible. Defendant intended to communicate that the \$276.46 price was the former
 18 or original price of the Office Chair. Defendant advertised this chair as "50% off,"
 19 which equals a discount of approximately \$138. Additionally, Defendant advertised
 20 that its "sale" on the Office Chair would last for only two more days. Plaintiff saw
 21 all three advertisements on Wayfair's website. An exemplar screenshot of Wayfair's
 22 website advertising the Office Chair on an earlier date of September 29, 2015, for
 23 \$138.99, formerly \$276.46, and 50% off, is attached as Exhibit B.

24 30. Plaintiff Carson was induced to purchase the Office Chair, believing
 25 that she was able to purchase the Office Chair for significantly less than it was
 26 worth and normally sells for in the market place. Plaintiff's purchase was made in
 27 reliance on Defendant's advertised reduction of the Office Chair's former price, on
 28 the 50% price reduction, and on the short duration of Defendant's sale.

1 31. Plaintiff Carson would not have purchased the Office Chair if not for
 2 Defendant's advertised former price, 50% price reduction, and the short duration of
 3 Defendant's sale.

4 32. Defendant's former price for the Office Chair of \$276.46 was not the
 5 prevailing market price of the Office Chair for the three months prior to Plaintiff
 6 Carson's purchase, either at Wayfair.com or its competitors.

7 33. Defendant's "sale" price of the chairs that Plaintiff Carson attempted to
 8 purchase before purchasing the Home Loft Concept Flowered Chairs is not a bona
 9 fide price at which a consumer good is truly offered to the public, but instead a
 10 classic "bait-and-switch" scheme in violation of Cal. Bus. & Prof. Code § 17500 and
 11 Cal. Civil Code §1770(a)(9) and §1770(a)(10).

12 34. Plaintiff Mark Sanders-Ferriera visited Wayfair.com on June 26, 2015,
 13 for the purpose of buying lounge chairs. He saw a lounge chair advertised as "Home
 14 Loft Concept Starks Lounge Chair" ("Lounge Chair"). Defendant falsely advertised
 15 the Lounge Chair on its website as having a current price of \$248.99 with a much
 16 higher price of \$913.42 that was stricken through but still visible. Defendant
 17 intended to communicate that the \$913.42 price was the former or original price of
 18 the Lounge Chair. Defendant advertised this chair as "73% off," which equals a
 19 steep discount of approximately \$664.43. Plaintiff Sanders-Ferriera viewed these
 20 advertisements on Wayfair's website. An exemplar screenshot of Wayfair's website
 21 advertising the Lounge Chair on an earlier date of June 22, 2015, as on sale for
 22 \$260.99, formerly \$913.42, and 71% off is attached as Exhibit C.

23 35. Plaintiff Sanders-Ferriera was induced to purchase two (2) Lounge
 24 Chairs (SKU NFN1313), believing that he was able to purchase the them for
 25 significantly less than they were worth and normally sell for in the market place.
 26 Plaintiff Sanders-Ferriera's purchase was made in reliance on Defendant's
 27 advertised sale, the steep difference of the Lounge Chairs' former price, and on the
 28 73% price reduction.

1 36. Plaintiff Sanders-Ferriera would not have purchased the Lounge Chairs
2 if not for Defendant's advertised sale, former price, and 73% price reduction.

3 37. Defendant did not clearly, exactly, and conspicuously state in its
4 advertisement of the Office Chair or the Lounge Chairs the date it was sold at the
5 former price.

6 38. Defendant's advertised former prices were not bona fide prices for the
7 Office Chair or the Lounge Chairs for a reasonably substantial period of time.

8 39. Defendant did not openly and actively offer the Office Chair or Lounge
9 Chairs for sale at the "regular" or "original" prices for a reasonably substantial
10 period of time in Wayfair's regular course of business.

11 40. Defendant's advertisements were likely to deceive a reasonable
12 consumer.

13 41. Plaintiffs' reliance upon Defendant's false price comparison advertising
14 was not only reasonable, but also was entirely intended by Wayfair. Empirical
15 marketing studies show that retailers have an incentive to engage in this false and
16 fraudulent behavior:

17 [b]y creating an impression of savings, the presence of a higher reference
18 point enhances subjects perceived value and willingness to buy the product...
19 Thus, if the reference price is not truthful, a consumer may be encouraged to
20 purchase as a result of a false sense of value.

21 *Comparative Price Advertising: Informative or Deceptive?*, Dhruv Grewal and
22 Larry D. Compeau, *Journal of Public Policy & Marketing*, vol. 11k, No. 1, at 55-56
23 (Spring 1992).

24 42. Plaintiffs would like to shop at Wayfair again, but cannot trust
25 Wayfair's current price advertisements. Without tracking Wayfair's advertisements
26 on a daily basis for each item, Plaintiffs and all other Class Members have no
27 realistic way to know which of Wayfair's advertised sale prices are false or
28 deceptive. If the Court were to issue an injunction ordering Wayfair to comply with
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1 California's advertising laws and prohibiting Wayfair from using the deceptive
 2 practices discussed herein, Plaintiffs would likely shop at Wayfair again in the near
 3 future.

4 **CLASS ALLEGATIONS**

5 43. Plaintiffs bring this action on their own behalf and on behalf of a
 6 proposed Class of all other persons similarly situated. The Class Plaintiffs seek to
 7 represent is defined as:

8 All persons who, while in the State of California and between February
 9 1, 2012 and February 1, 2016 (the "Class Period"), purchased from
 10 Wayfair: (1) one or more consumer goods advertised at a 20% discount
 11 from the stated "original" or "regular" price and who have not received
 12 a refund or credit for their purchase(s), and (2) one or more consumer
 13 goods at a higher price after being advised that the original item sought
 14 to be purchased is "Sold Out" and who have not received a refund or
 15 credit for their purchase(s).

16 44. Excluded from the Class are Defendant, as well as its officers,
 17 employees, agents, board members and legal counsel, and any judge who
 18 presides over this action (or spouse or family member of presiding judge), as
 19 well as all past and present employees, officers and directors of Wayfair.

20 45. Plaintiffs reserve the right to expand, limit, modify, or amend this
 21 class definition, including the addition of one or more subclasses, in
 22 connection with Plaintiffs' motion for class certification, or at any other time,
 23 based upon, *inter alia*, changing circumstances and/or new facts obtained
 24 during discovery.

25 46. *Numerosity:* The Class is composed of thousands of individuals, whose
 26 joinder in this action would be impracticable. The disposition of their claims
 27 through this class action will benefit all Class Members, the parties and the courts.

28 47. *Existence and Predominance of Common Questions of Fact and Law:*
 29 There is a well-defined community of interest in questions of law and fact affecting
 30 the Class. These questions of law and fact predominate over individual questions
 31 affecting individual Class Members, including, but not limited to, the following:

(a) Whether, during the Class Period, Wayfair used false "regular" or "original" prices and falsely advertised price discounts on its website;

(b) Whether, during the Class Period, the "original" or "regular" prices advertised by Wayfair were the prevailing market prices for the respective consumer goods sold by Wayfair during the three month periods preceding the dissemination and/or publication of the advertised former prices;

(c) Whether, during the Class Period, Wayfair advertised discounted prices for its consumer goods with the intent not to sell those goods at the prices stated in Wayfair's advertisements;

(d) Whether, during the Class Period, Wayfair advertised consumer goods with the intent not to supply reasonably expected demand for those goods;

(e) Whether Wayfair's use of false and deceptive price advertising constituted false advertising under California law;

(f) Whether Wayfair engaged in unfair, unlawful and/or fraudulent business practices under California law;

(g) Whether Wayfair misrepresented and/or failed to disclose material facts about its product pricing and discounts;

(h) Whether Wayfair has made false and misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions;

(i) Whether Wayfair's conduct, as alleged herein was intentional and knowing;

(j) Whether Class Members are entitled to damages and/or restitution; and, if so, what is the amount of revenues and/or profits Wayfair received and/or was lost by Class Members as a result of the conduct alleged herein;

(k) Whether Wayfair is likely to continue to use false, misleading or illegal price comparisons such that an injunction is necessary; and

(l) Whether Plaintiffs and Class Members are entitled to an award of reasonable attorney's fees, pre-judgment interest and costs of suit.

1 48. *Typicality*: Plaintiffs' claims are typical of, and are not antagonistic to,
 2 the claims of all Class Members. Plaintiffs and the Class Plaintiffs have all been
 3 deceived (or were likely to be deceived) by Wayfair's false pricing scheme, as
 4 alleged herein.

5 49. *Adequacy*: Plaintiffs are adequate representatives of the Class because
 6 Plaintiffs are members of the Class and Plaintiffs' interests do not conflict with the
 7 interests of the Class Members Plaintiffs seek to represent. Plaintiffs will fairly and
 8 adequately represent and protect the interests of the Class because Plaintiffs are not
 9 antagonistic to the Class. Plaintiffs have retained counsel who are competent and
 10 experienced in the prosecution of consumer fraud and class action litigation.

11 50. *Superiority*: A class action is superior to other available means for the
 12 fair and efficient adjudication of Plaintiffs' and Class Members' claims. Because of
 13 the relatively modest size of individual Class Members' claims, few, if any, Class
 14 Members could afford to seek legal redress of the wrongs complained of herein on
 15 an individual basis. Absent class action, Class Members and the general public
 16 would not likely recover, or would not likely have the chance to recover, damages or
 17 restitution, and Wayfair will be permitted to retain the proceeds of its misdeeds.

18 51. All Class Members, including Plaintiffs, were exposed to one or more
 19 of Wayfair's misrepresentations or omissions of material fact including Wayfair's
 20 claims that former "original" or "regular" advertised prices were in existence and
 21 Wayfair's bait-and-switch scheme. Due to the scope and extent of Wayfair's
 22 consistent false price advertising scheme, disseminated in a massive, years-long
 23 campaign to California consumers via the Internet, radio, TV and print media, it can
 24 reasonably be inferred that such misrepresentations or omissions of material fact
 25 were uniformly made to all Class Members. In addition, it can be reasonably
 26 presumed that all Class Members, including Plaintiffs, affirmatively acted in
 27 response to the representations contained in Wayfair's false advertising scheme

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1 when purchasing consumer goods advertised as "Daily Sales", among other sales, on
2 Wayfair's website.

3 52. Plaintiffs are informed and believe that Wayfair keeps extensive
4 computerized records of its customers through, inter alia, customer loyalty
5 programs, co-branded credit cards and general marketing programs. Wayfair has
6 one or more databases through which a significant majority of Class Members may
7 be identified and ascertained, and it maintains contact information, including email
8 and home mailing addresses, through which notice of this action could be
9 disseminated in accordance with due process requirements.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of the "Unfair" Prong of the UCL, California Business & Professions Code § 17200, *et seq.*)

14 53. Plaintiffs reallege by reference, as if fully set forth herein, all of the
15 above paragraphs.

16 54. The UCL defines unfair business competition to include any "unlawful,
17 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or
18 misleading" advertising. Cal. Bus. & Prof. Code § 17200.

19 55. A business act or practice is "unfair" under the UCL if the reasons,
20 justifications and motives of the alleged wrongdoer are outweighed by the gravity of
21 the harm to the alleged victims.

22 56. Wayfair has violated the "unfair" prong of the UCL by representing a
23 false "original" price and corresponding price discount when in fact, Wayfair has
24 inflated the purported "original" prices for products so that the promised discount
25 was false, misleading and deceptive. Wayfair has also violated the "unfair" prong of
26 the UCL by representing it would sell consumer goods advertised as "sales" when it
27 did not intent not to supply reasonably expected demand for those goods. Wayfair
28 has also violated the "unfair" prong of the UCL by representing it would sell

1 consumer goods for a "sale" price when in fact it only sells one (1) or very few
 2 item(s) at the advertised price and then tells subsequent customers that the item is
 3 "sold out."

4 57. These acts and practices were unfair because they caused Plaintiffs, and
 5 were likely to cause consumers, to falsely believe that Wayfair is offering value,
 6 discounts or bargains from the prevailing market value or worth of the products sold
 7 that did not, in fact, exist. As a result, purchasers, including Plaintiffs, reasonably
 8 perceived that they were buying products which regularly sold in the retail
 9 marketplace at substantially higher prices (and were, therefore, worth more) than
 10 what they paid. This perception has induced reasonable purchasers, including
 11 Plaintiffs, to buy such products, which they otherwise would not have purchased.

12 58. The gravity of the harm to members of the Class resulting from these
 13 unfair acts and practices outweighed any conceivable reasons, justifications, and/or
 14 motives of Wayfair for engaging in such deceptive acts and practices. By
 15 committing the acts and practices alleged above, Wayfair engaged in unfair business
 16 practices within the meaning of California Business & Professions Code §§ 17200,
 17 *et seq.*

18 59. Through its unfair acts and practices, Wayfair has improperly obtained
 19 money from Plaintiffs and the Class. As such, Plaintiffs request that this Court
 20 cause Wayfair to restore this money to Plaintiffs and all Class Members, and to
 21 enjoin Wayfair from continuing to violate the UCL as discussed herein and/or from
 22 violating the UCL in the future. Otherwise, Plaintiffs, the Class and members of the
 23 general public may be irreparably harmed and/or denied an effective and complete
 24 remedy if such an order is not granted.

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SECOND CAUSE OF ACTION

(Violation of the "Fraudulent" Prong of the UCL, California Business & Professions Code § 17200, *et seq.*)

4 60. Plaintiffs reallege by reference, as if fully set forth herein, all of the
5 above paragraphs.

6 61. The UCL defines unfair business competition to include any "unlawful,
7 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or
8 misleading" advertising. Cal. Bus. & Prof. Code § 17200.

9 62. A business act or practice is "fraudulent" under the UCL if it is likely
10 to deceive members of the consuming public.

11 63. Wayfair's advertising concerning false "original" or "regular" former
12 prices, including, but not limited to, its internet, TV, radio and print advertisements
13 were "fraudulent" within the meaning of the UCL because they deceived Plaintiffs,
14 and were likely to deceive members of the Class, into believing that Wayfair was
15 offering value, discounts or bargains from the prevailing market value. As a result
16 purchasers, including Plaintiffs, reasonably perceived that they were receiving
17 products which regularly sold in the retail marketplace at substantially higher prices
18 (and were, therefore, worth more) than what they paid. This perception induced
19 reasonable purchasers, including Plaintiffs, to buy such products from Wayfair,
20 which they otherwise would not have purchased.

21 64. Wayfair's acts and practices as described herein have deceived
22 Plaintiffs and were highly likely to deceive members of the consuming public.
23 Specifically, in deciding to purchase consumer goods from Wayfair, Plaintiffs relied
24 upon Wayfair's misleading and deceptive representations regarding its "original"
25 and "regular" and "sale" prices. Each of these factors played a substantial role in
26 Plaintiffs' decision to purchase those products, and Plaintiffs would not have
27 purchased those items in the absence of Wayfair's misrepresentations. Accordingly,

1 Plaintiffs have suffered monetary loss as a direct result of Wayfair's practices
2 described above.

3 65. As a result of the conduct described above, Wayfair has been unjustly
4 enriched at the expense of Plaintiffs and members of the Class. Specifically,
5 Wayfair has been unjustly enriched by obtaining revenues and profits that it would
6 not otherwise have obtained absent its false, misleading and deceptive conduct.

7 66. Through its unfair acts and practices, Wayfair has improperly obtained
8 money from Plaintiffs and the Class. As such, Plaintiffs requests that this Court
9 cause Wayfair to restore this money to Plaintiffs and all Class Members, and to
10 enjoin Wayfair from continuing to violate the UCL as discussed herein and/or from
11 violating the UCL in the future. Otherwise, Plaintiffs, the Class and members of the
12 general public may be irreparably harmed and/or denied an effective and complete
13 remedy if such an order is not granted.

THIRD CAUSE OF ACTION

(Violation of the "Unlawful" Prong of the UCL, California Business & Professions Code § 17200, *et seq.*)

17 67. Plaintiffs reallege by reference, as if fully set forth herein, all of the
18 above paragraphs.

19 68. The UCL defines unfair business competition to include any "unlawful,
20 unfair or fraudulent" act or practice, as well as any "unfair, deceptive, untrue or
21 misleading" advertising. Cal. Bus. & Prof. Code § 17200.

22 69. A business act or practice is "unlawful" under the UCL if it violates any
23 other law or regulation.

24 70. The FTCA prohibits "unfair or deceptive acts or practices in or
25 affecting commerce" (15 U.S.C. § 45(a)(1)) and specifically prohibits false
26 advertisements. 15 U.S.C. § 52(a). The FTC has established guidelines that describe
27 false former pricing schemes, similar to Wayfair's in all material respects, as
28 deceptive practices that would violate the FTC.

1 71. One of the most commonly used forms of bargain advertising is to offer
 2 a reduction from the advertiser's own former price for an article. If the former price
 3 is the actual, bona fide price at which the article was offered to the public on a
 4 regular basis for a reasonably substantial period of time, it provides a legitimate
 5 basis for the advertising of a price comparison. Where the former price is genuine,
 6 the bargain being advertised is a true one. If, on the other hand, the former price
 7 being advertised is not bona fide but fictitious – for example, where an artificial,
 8 inflated price was established for the purpose of enabling the subsequent offer of a
 9 large reduction – the "bargain" being advertised is a false one; the purchaser is not
 10 receiving the unusual value he expects. 16 C.F.R. § 233.1(a).

11 72. California's statutory and regulatory law expressly prohibits false
 12 former advertising pricing schemes. Cal. Bus. & Prof. Code § 17501, entitled
 13 "*Value determinations; Former price advertisements*", states:

14 For the purpose of this article the worth of value of anything
 15 advertised is the prevailing market price, wholesale if the offer is at
 16 wholesale, retail if the offer is at retail, at the time of publication of
 17 such advertisement in the locality wherein the advertisement is
 18 published.

19 *No price shall be advertised as a former price of any advertised
 20 thing, unless the alleged former price was the prevailing market price
 21 as above defined within three months next immediately preceding the
 22 publication of the advertisement or unless the date when the alleged
 23 former price did prevail is clearly, exactly and conspicuously stated in
 24 the advertisement. [emphasis added.]*

25 73. California Business & Professions Code § 17500 prohibits a business
 26 from advertising goods or services at a price which that corporation does not intend
 27 to sell those goods and services.

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1 74. California Civil Code § 1770, subsection (a)(9) prohibits a business
 2 from advertising goods or services with an intent not to sell them as advertised.
 3 Subsection (a)(10) prohibits a business from advertising goods and services with the
 4 intent not to supply reasonably expected demand, unless the advertisement discloses
 5 a limitation of quantity.

6 75. Wayfair's use of and reference to a materially false "original" price, or
 7 purported percentage discounts violated and continues to violate the FTCA, 15
 8 U.S.C. § 45(a)(1), and 15 U.S.C. § 52(a), as well as the FTC Guidelines published at
 9 Title 16, Code of Federal Regulations, Section 233. It also violated and continues to
 10 violate Cal. Bus. & Prof. Code § 17501, and Cal. Civ. Code § 1770 (a)(9) and
 11 (a)(10) by advertising false discounts from purported former prices that were, in
 12 fact, not the prevailing market prices within the three months next preceding the
 13 publication and dissemination of the advertisements containing the false former
 14 prices.

15 76. As a result of the conduct described above, Wayfair has been unjustly
 16 enriched at the expense of Plaintiffs and members of the Class. Specifically,
 17 Wayfair has been unjustly enriched by obtaining revenues and profits that it would
 18 not otherwise have obtained absent its false, misleading and deceptive conduct.

19 77. Through its unfair acts and practices, Wayfair has improperly obtained
 20 money from Plaintiffs and the Class. As such, Plaintiffs request that this Court
 21 cause Wayfair to restore this money to Plaintiffs and all Class Members, and to
 22 enjoin Wayfair from continuing to violate the UCL, and/or from violating the UCL
 23 in the future. Otherwise, Plaintiffs, the Class and members of the general public
 24 may be irreparably harmed and/or denied an effective and complete remedy if such
 25 an order is not granted.

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FOURTH CAUSE OF ACTION

(Violation of the California False Advertising Law, California Business & Professions Code Sections 17500, *et seq.*)

4 78. Plaintiffs reallege by reference, as if fully set forth herein, all of the
5 above paragraphs.

6 79. The California False Advertising Law prohibits unfair, deceptive,
7 untrue, or misleading advertising, including, but not limited to, false statements as to
8 worth, value and former price.

9 80. Wayfair's practice of advertising "former" or "original" prices which
10 were materially greater than the prevailing prices of those products, as well as only
11 offering one (1) or very few unit(s) of such goods and then telling subsequent
12 customers such sale goods were "sold out" was an unfair, deceptive and misleading
13 advertising practice because it gave the false impression that the products sold by
14 Wayfair regularly sold in the retail marketplace at substantially higher prices (and
15 therefore, worth more) than they actually were and constituted a classic "bait-and-
16 switch" scheme. In fact, the goods sold by Wayfair did not have a prevailing market
17 price anywhere close to the "original" price advertised and Wayfair never intended
18 to sell more than one (1) unit at the advertised "sale" price.

19 81. Through its unfair acts and practices, Wayfair has improperly obtained
20 money from Plaintiffs and the Class. As such, Plaintiffs requests that this Court
21 cause Wayfair to restore this money to Plaintiffs and all Class Members, and to
22 enjoin Wayfair from continuing to violate the UCL, and/or from violating the UCL
23 in the future. Otherwise, Plaintiffs, the Class and members of the general public
24 may be irreparably harmed and/or denied an effective and complete remedy if such
25 an order is not granted.

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FIFTH CAUSE OF ACTION

(Violation of the Consumer Legal Remedies Act, California Civil Code § 1750, *et seq.*, Injunctive Relief)

82. Plaintiffs reallege by reference, as if fully set forth herein, all of the above paragraphs.

83. This cause of action is brought pursuant to the CLRA.

7 84. Plaintiffs and each member of the proposed Class are "consumers"
8 within the meaning of California Civil Code § 1761(d).

9 85. Wayfair's sale of consumer goods and home furnishings to Plaintiffs
10 and members of the Class were "transactions" within the meaning of California
11 Civil Code § 1761(e). The products purchased by Plaintiffs and members of the
12 proposed Class are "goods" within the meaning of California Civil Code § 1761(a).

13 86. As described herein, Wayfair violated the CLRA by falsely
14 representing the nature, existence and amount of price discounts from referenced
15 "former" or "original" prices of goods advertised on its "Daily Sales" and elsewhere
16 on its website. Wayfair inflated the purported "former" or "original" prices such
17 that the promised discount, value, bargain and available stock of such goods were
18 false, in violation of Cal. Civ. Code § 1770(a)(5), (a)(7), (a)(9), (a)(10), (a)(13) and
19 (a)(14).

20 87. Plaintiffs relied upon Wayfair's false representations in deciding to
21 purchase the consumer goods and home furnishings from Wayfair. Plaintiffs would
22 not have purchased such items absent Wayfair's unlawful conduct. As a result of
23 these acts and practices, Plaintiffs have suffered damage in that Plaintiffs have spent
24 money at Wayfair that Plaintiffs would not have otherwise spent absent Wayfair's
25 unlawful and misleading acts and practices.

26 88. Pursuant to § 1782(a) of the CLRA, on February 1, 2016, Plaintiffs'
27 counsel, on behalf of Plaintiffs, served Defendant by United States certified mail,
28 return receipt requested, with notice of Defendant's particular violations of the

1 CLRA and requested that Defendant identify victims, notify victims and remedy is
 2 illegal conduct within 30 days. If Defendant fails to rectify or agree to rectify the
 3 problems associated with the actions detailed above and give notice to all affected
 4 consumers within 30 days after receipt of the California Civil Code section 1782
 5 notice, Plaintiffs will amend this complaint to seek, *inter alia*, actual damages,
 6 restitution and punitive damages for violation of the Act. In this event: (1) pursuant
 7 to California Civil Code section 1780(a)(2), Plaintiffs will be entitled to, and
 8 therefore seek, a Court order enjoining the above-described wrongful acts and
 9 practices that violate California Civil Code section 1770; and (2) Plaintiffs and the
 10 Class will also be entitled to recover attorneys' fees, costs, expenses and
 11 disbursements pursuant to California Civil Code sections 1780 and 1781.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs, individually and on behalf of the other members of
 14 the proposed Class, request that this Court award relief as follows:

15 A. An order certifying that this action may be maintained as a class action,
 16 that Plaintiffs be appointed as Class Representatives and Plaintiffs' counsel be
 17 appointed Class Counsel;

18 B. Pursuant to Plaintiffs' first four causes of action, a judgment awarding
 19 Plaintiffs and all members of the Class restitution and/or other equitable relief,
 20 including, but not limited to, restitutionary disgorgement of all profits and unjust
 21 enrichment that Wayfair obtained from Plaintiffs and the Class as a result of its
 22 unlawful, unfair and fraudulent business practices described herein;

23 C. An order enjoining Defendant from continuing to violate the UCL and
 24 FAL, as described herein, and/or an order enjoining Defendant from violating the
 25 UCL and FAL;

26 D. A judgment awarding Plaintiffs their costs of suit; including reasonable
 27 attorney's fees pursuant to Code of Civil Procedure § 1021.5 and as otherwise

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permitted by statute; and pre and post-judgment interest; and

E. Such other and further relief as the Court deems appropriate.

DATED: February 2, 2016 ROBERTSON & ASSOCIATES, LLP

By: /s / Alexander Robertson, IV

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Attorneys for Plaintiffs & Proposed Class

AFFIDAVIT OF COUNSEL

I, Alexander Robertson, IV, declare as follows:

3 1. I am an attorney with the law firm of Robertson & Associates, LLP. I
4 am admitted to practice law in California and before this Court, and am a member in
5 good standing of the State Bar of California. This declaration is made pursuant to
6 California Civil Code Section 1780(d). I made this declaration based on my
7 research of public records and upon personal knowledge and, if called upon to do so,
8 could and would testify competently thereto.

9 2. Based on my research and personal knowledge, Defendant Wayfair,
10 Inc. (“Defendant”) does business within the State of California, and Plaintiffs
11 purchased Defendant’s products within the State of California, including but not
12 limited to within Los Angeles County and Riverside County, as alleged in this Class
13 Action Complaint.

14 I declare under penalty of perjury under the laws of the United States and the
15 State of California this 2nd day of February, 2016 in Westlake Village, California,
16 that the foregoing is true and correct.

Alexander Robertson, IV

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EXHIBIT "A"

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http://www.wayfair.com/home-loft-concept-flowered-chair-345591-WFN1486.htm

16 captures

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EXHIBIT "B"



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EXHIBIT "C"

